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II-B 002

MEMORANDUM:

SUBJECT: Changes Made to the Draft of Proposed 40 CFR Part 71 Subsequent to Submittal to OMB

FROM: Candace Carraway
Operating Permits Group
Office of Air Quality Planning and Standards

TO: Docket file

DATE: February 8, 1995

Material changes in the proposed preamble and regulation which occurred subsequent to submittal to the Office of Management and Budget for their review on August 29, 1994.

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Disclosure of Changes Made to the Draft of Proposed 40 CFR Part 71 Subsequent to Submittal to OIRA

submitted by

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The major change in the proposed rule and preamble that occurred during OIRA's review period was that the preamble was reduced in length by approximately 50%. The language that was cut from the proposed preamble was moved to a document entitled "Supplementary Information for Proposed Federal Operating Permits Rule" which is contained in the docket for the part 71 rulemaking. The proposed preamble is organized by sections that correspond to sections of the proposed rule. Nearly every section of the proposed preamble was reduced in length, with the major reductions felt in the sections on permit applications; permit content; and permit review, issuance, renewal, reopenings, and revisions.

Several substantive changes to the proposed preamble and rule were made at the suggestion of OIRA. They are reflected on pages 3-23 (hand-lettered in upper right corner) of this document. In brief, at OIRA's suggestion, the following changes were made:

1. Minor clarifications and grammatical improvements to proposed §§ 71.3(b)(2), 71.4(g), and 71.10(d)(1) were made, as shown on page 3 of this document.

2. Notifying the public of the opportunity to be put on a mailing list through the use of such publications as regional and State funded newsletters, environmental bulletins, or State law journals would be done at the discretion of the permitting authority, in addition to other required means of providing notice, as shown on page 3 of this document.

3. In the proposed preamble, the EPA expressed its intentions to process significant permit revisions within 12 months of receipt, as shown on page 4 of this document.

4. For programs in which EPA delegates administrative responsibility to a State or local agency or eligible Tribe, the citizens' right to petition EPA to object to a permit proposed by the delegate agency was eliminated. That right is replaced with the right that any interested citizen (under any part 71 program) would have to petition EPA to reopen a permit for cause, at any time. To effect this change, numerous references to petitioning EPA to object to a proposed permit were removed from the preamble, one regulatory section was amended, and a new regulatory section was added. See pp. 5-16 of this document.

5. Language was added to the proposed preamble to clarify the relationship between the part 71 proposal and the decision making on the proposed revisions to 40 CFR part 70, as shown on page 17.

6. The proposed preamble and regulation were changed to provide that when EPA uses contractor assistance to administer a part 71 program, permit fees charged to sources would be based on actual contractor costs (per hour) instead of projected contractor costs. Also, language was added in the proposed preamble

soliciting comment on the utility of having contracts for part 71 programs independently bid, using a competitive bid process. See pp. 18-20.

In addition to the changes listed above, the following substantive revisions were made to the proposed preamble and regulation:

1. The proposed preamble and regulation were changed to allow sources to pay their initial permit fees in two installments, with the first installment due along with the initial fee calculation worksheet. See pp. 21-24.

2. The proposed preamble and regulation were changed to provide for an effective date of November 15, 1997 for part 71 programs on Tribal lands and for a mechanism for resolving jurisdictional disputes between Tribes and States. See pp. 25-28.

3. Several sentences were added to the proposed preamble to alert the public that EPA expects to publish a supplemental proposal setting forth permit revision procedures under 40 CFR part 70. See page 29.

4. Definitions for the terms "Part 70 permit" and "Part 70 program" were added to the proposed regulation. See pp. 30-31.

5. The word "or" was substituted for "and" in the definition of the term "applicable requirement." See page 32-33.

6. In the proposed preamble, the EPA alerted the public that the document entitled "Supplementary Information for Proposed Federal Operating Permits Rule" was contained in the docket for the rulemaking.

1. proposed new language for 71.3(b)(2), p. 23

(2) Nonmajor sources subject to a standard or other requirement ~~promulgated~~ under either section 111 or section 112 of the Act promulgated after July 21, 1992 shall be exempted from the obligation to obtain a part 71 permit if the Administrator exempts ~~any such~~ such sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

2. proposed new language for 71.4(g), p. 29

At the beginning of the second sentence of 71.4(g), substitute: "The promulgation of this part" for "This rulemaking"

3. proposed new language for 71.10(d)(1), p. 178

Add reference to the exception provided by 71.7(a)(1)(v). Sentence would read:

(1) When a part 71 program has been delegated in accordance with the provisions of the section, except as provided by § 71.7(a)(1)(v) of this part, the delegate agency shall provide to the Administrator a copy of each application for a permit, permit renewal, or permit revision (including any compliance plan, or any portion the Administrator determines to be necessary to review the application and permit effectively), each proposed permit and each final part 71 permit.

4. proposed new language for 71.11(d)(3)(i)(3), p. 193

Add to the first sentence "where deemed appropriate by the permitting authority." First sentence would read:

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals.

proposed additional preamble language for page 166 (add to end of first paragraph):

Proposed part 71 would require the permitting authority to take final action on applications for significant permit revisions within 18 months of receipt of the application. However, because prompt action on permit revisions is of critical importance to industry, the EPA intends to complete such revisions within 12 months and expects that only the most complex revisions would require more than a year to complete.

proposed new language for 71.10(h) which replaces the entire old section:

(h) Public petitions. In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n) of this part.

proposed new section, § 71.11(n):

(n) Public petitions to the Administrator.

(1) Any interested person (including the permittee) may petition the Administrator to reopen a permit for cause, and the Administrator may commence a permit reopening on his or her own initiative. However, the Administrator shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(i)(1) or § 71.6(a)(5)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the Administrator decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the Administrator to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the Administrator decides the request is justified and that cause exists to revise, revoke and reissue or terminate

a permit, he or she shall initiate proceedings to reopen the permit pursuant to § 71.7(i) or § 71.7(j) of this part.

proposed new preamble language on p. 107, making it the last paragraph in the discussion of 71.11:

Under both delegated and nondelegated part 71 programs, interested persons (including permitees) would be authorized to petition the Administrator to reopen an already issued permit for cause as provided in proposed § 71.11(n). Petitions would be required to be in writing and to contain facts or reasons supporting the request. If the Administrator determined that cause exists to reopen the permit, he or she would revise, revoke and reissue, or terminate the permit consistent with the requirements and procedures in proposed § 71.7.

Under part 70, citizens can petition EPA to object to State issued permits and can appeal EPA's failure to object to a proposed permit. However, for both delegated and nondelegated part 71 programs, the EPA feels this type of petition process is unnecessary because the final permit can be appealed directly to the Environmental Appeals Board (EAB) and because citizens can use the petition process provided by proposed § 71.11(n) in cases where the deadline for appeal to the EAB has passed. The EPA believes that this approach provides an adequate opportunity for EPA oversight of part 71 programs, and that consequently there is little value in providing the opportunity for citizens to petition the Administrator to object to a proposed permit, which could result in two separate and simultaneous routes to appeal EPA's permitting actions. Moreover, the approach proposed today would be more consistent with that taken in the Agency's recently promulgated rule (to be codified at 40 CFR 71.21 et seq), which governs how title V specialty permits would be issued to sources seeking alternative hazardous air pollution emissions limits under section 112(i)(5) of the Act. See 59 FR 59921 (Nov. 21, 1994) ("Federal Operating Permit Programs; Permits for Early

Reductions Sources"). The Agency solicits comment on this approach.

EPA with a copy of the effective permit addendum reflecting the change only where EPA has delegated a part 71 program to a State or eligible Tribe.

b. De Minimis Permit Revisions.

Following the proposed revisions to part 70, EPA is proposing at § 71.7(f) a de minimis permit revision track in part 71 for changes that do not undergo merged program administrative amendment procedures but that have only a small emissions impact. Under this track, a source would be able to operate the change as early as the day it submits its permit revision application. Public and affected State review of the change would then follow, and, where EPA had delegated administration of a part 71 program to a State or eligible Tribe, EPA would have an opportunity to review and object to the change if it receives a citizen petition. See the more detailed discussion in section 3-F-2-b of the Supplementary Information Document, as well as the Agency's preamble for the proposed revisions to part 70 (59 FR 44460, Aug. 29, 1994) regarding the types of changes that would be eligible for this process, the details of the process itself, and the rationale for the creation of this revision track.

delete

In certain respects, the de minimis track in part 71 would differ from that in proposed part 70. For example, a person who was unsuccessful in persuading the part 71 permitting authority to disapprove a source's requested de minimis change could not petition EPA to veto the permit ~~do so only where EPA has delegated part 71 program administration to a State or~~

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and when EPA has delegated that responsibility,

~~eligible~~ both. This is because when EPA is the permitting authority, citizens will already have the opportunity to ~~request that EPA, as the permitting authority, disapprove the change, and will be able to~~ directly appeal ~~EPA's failure to respond (and~~ the ~~consequent~~ final de minimis permit revision) to the Environmental Appeals Board. Thus, requiring an intermediate step of requesting EPA to object to its own permitting action would both be redundant and delay citizen access to administrative, and ultimately judicial, review of the change. The Agency solicits comment on this approach, particularly on whether requiring the intermediate step of public petition to EPA even when EPA is the permitting authority would serve any utility that would outweigh the interests of achieving expedited final action on de minimis permit revisions.

While the proposed revisions to part 70 would leave States discretion in developing their part 70 programs in determining whether the source, versus the State permitting authority, would have the responsibility to provide public notice of de minimis changes, under part 71, sources would have that duty. This specificity is due to the fact that EPA, unlike States, will not be conducting further program development for part 71 programs beyond promulgating part 71, so it is necessary for EPA to establish in this rule whether the public notification duty will fall on sources or the permitting authority. The EPA proposes to place the public notice responsibility on sources because the Agency believes that sources will be in a better position to

be given, part 71 would be specific on these points, for the reasons discussed above. The EPA solicits comment, however, on the method or methods sources could use to provide such notice. For example, sources could be required to publish notice of de minimis changes in a newspaper of general circulation within the area where the source is located or in State or local governmental publications, to send actual notice to interested persons on a list developed by the source or the permitting authority, or both. At minimum, the final rule will provide a mechanism to ensure that public notice reaches all interested citizens.

Moreover, in the case of a program delegated to a State or eligible Tribe, if the permitting authority did not heed a request to disapprove a de minimis change, the person requesting disapproval could petition EPA to object to the change in the manner set forth in proposed § 71.10. For purposes of part 71, this opportunity to petition EPA to object to de minimis change would be provided only where EPA had delegated part 71 administration to a State or eligible Tribe. As discussed previously, EPA believes this opportunity has utility only where EPA is not acting as the permitting authority. When EPA is the permitting authority, citizens would be able to directly appeal the final permit action approving the de minimis revision to the Environmental Appeals Board pursuant to proposed § 71.11(1).

c. Minor Permit Revisions.

Under today's proposal, most changes ineligible for administrative amendment or de minimis permit revision

day review period had expired, provided EPA had not objected, before issuing the final minor permit revision. The delegate agency would be required to take final action by day 60, or 15 days after the close of EPA's review period, whichever is later. In addition, ~~only~~ under part 71 ~~delegated~~ programs ~~could~~ may not commenters petition EPA to object to minor permit revisions ~~as provided in proposed 71.12~~. for the reasons discussed above with respect to de minimis permit revisions

d. Significant Permit Revisions. Following the proposed revisions to part 70, under proposed part 71 the significant permit revision process would essentially follow that of the significant permit modification track in existing part 70. See the description of this process in the Agency's proposed revisions to part 70 (59 FR 44460, Aug. 29, 1994) for the rationale for this approach, which EPA incorporates by reference for purposes of part 71. See also the more detailed description of the part 71 significant permit revision process contained in section 3-F-2-d of the Supplementary Information Document.

Proposed part 71 would require the permitting authority to take final action on applications for significant permit revisions within 18 months of receipt of the application. However, because prompt action on permit revisions is of critical importance to industry, the EPA intends to complete such revisions within 12 months and expects that only the most complex revisions would require more than a year to complete.

e. Alternative Option for Monitoring Changes. Following the proposed revisions to part 70, EPA also

proposes as an option in part 71 alternative provisions governing changes involving monitoring requirements. While this option essentially adheres to the 4-track system discussed above, certain provisions of the system would need to be modified to incorporate the alternative option for monitoring changes. The rationale for this alternative option is discussed in detail in the preamble to the proposed revisions to part 70 (see 59 FR 44460, Aug. 29, 1994), and this notice incorporates that rationale by reference, to the extent it is applicable to part 71. As appropriate, EPA intends to match in the final part 71 rule the final part 70 provisions regarding this option. For a more detailed discussion of this option under part 71, see section 3-F-2-e of the Supplementary Information Document.

Under part 71, the source, rather than the permitting authority, would have the responsibility to provide monthly batch public notice of monitoring changes processed under this option's de minimis permit revision track, and only under delegated programs would EPA (upon citizen petition) have a role to review and object to any demonstration and de minimis permit revision approved by a delegate agency that fails to assure compliance with applicable requirements. Moreover, for monitoring changes processed under this option's significant permit revision track, part 71 permitting authorities would be required to send demonstrations and their evaluations to EPA only where EPA has delegated part 71 program administration. Again, EPA believes that expeditious process of de minimis permit

the Agency does not intend to waive its own right to review permits for affected sources under the acid rain program.

When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, the Administrator could object, in writing, to a part 71 permit if the delegate agency fails to properly submit, process, or provide notice as would be required by this part or if the part 71 permit does not assure compliance with applicable requirements of the Act. If the delegate agency fails to revise the proposed permit in response to the objection, the Administrator could deny the permit or issue a permit in accordance with the part 71 program.

If the Administrator does not object to a proposed permit under a delegated part 71 program with signature authority, the provisions in proposed § 71.10(h) would allow the public to petition the Administrator, within 60 days of the end of the 45-day EPA review period, to make such an objection. The delegate agency would be required to provide notice to the public as to the expiration of the 45-day EPA review period. If the Administrator objects to a part 71 permit as a direct result of a public petition, the delegate agency would be precluded from issuing the permit until such time as the basis for the objection has been resolved and the permit revised. In the event the permit was issued subsequent to the 45-day EPA review process, but prior to an objection under proposed § 71.10(g), the permit and its requirements would be effective and would not be stayed by

citizens may petition the Administrator ... for cause. Petition shall be in writing ... setting forth facts ... supporting the request. If the Administrator determines ... cause exists to ... permit, the public petition for review, and the Administrator would be required to, ~~if appropriate, modify~~, terminate, or revoke and reissue such permit consistent with the requirements in proposed § 71.7.

4. Delegation of Authority Agreement

A delegation of authority agreement would specify the terms and conditions of the delegation and would be required to include, but not be limited to:

(1) A provision that the delegation is made in accordance with proposed § 71.10;

(2) A provision that describes the source categories, geographic areas, and the administrative and enforcement activities governed by the delegation;

(3) A provision that requires the delegate agency to comply with the public notice requirements of proposed §§ 71.7 and 71.11;

(4) A provision that requires the delegate agency to provide a copy, through the appropriate Regional Office, of each permit application, proposed permit, and final permit to the Administrator as required in proposed § 71.10(d);

(5) A provision that any permit issued by a delegate agency contain a statement identifying the permit as a title V, part 71 permit;

(6) A provision that requires EPA's concurrence on any applicability determination or policy statement regarding title V or parts 70 or 71 not covered by determinations or guidance provided to the delegate agency;

(A) In the case of a program delegated pursuant to § 71.10 of this part, the permitting authority shall send a copy of the addendum to the permit to EPA within 7 days of the date the addendum takes effect.

(B) In all cases, the permitting authority shall send a copy of the addendum to any affected State within 7 days of the date the addendum takes effect.

(vi) Public request for disapproval.

(A) Within [15-45] days of the date public notification is given, any person may request that the permitting authority disapprove the change if the permitting authority retained authority to disapprove the de minimis permit revision as described under paragraph (f)(3)(iv)(B) of this section.

(B) Where the permitting authority was not required to retain authority to disapprove the de minimis permit revision, the public may petition the permitting authority to revoke the permit revision allowing the change.

(vii) Petitions to EPA. In the case of a program delegated pursuant to § 71.10 of this part, the public may petition EPA to object to the change within 60 days after the end of the [30-90] day disapproval period as described in paragraph (f)(3)(iv)(B) of this section where the permitting authority does not grant a request to disapprove the change.

(4) Source liability. If, after a source makes the requested change, the permitting authority disapproves the change or EPA objects to the change (in the case of a

the end of the 45-day review period and prior to an EPA objection.

(4) If a part 71 permit has been issued prior to receipt of an EPA objection under this paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 71.7(j) of this part, except in unusual circumstances, and the delegate agency may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(i) Appeal of permits. When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any permit applicant and any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1) of this part.

(j) Non-delegable conditions.

(1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h)(1) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

Attention Candace Caraway — 919-541-5509

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Insert p.6 (after 1st full paragraph)

The Agency is aware that many parties have already submitted comments expressing both their concerns about and their support for the proposed revisions and that these parties are interested in the final Agency decisions on many of the issues raised in the Part 70 rulemaking. This proposal for Part 71 is not intended in any way to prejudge the Agency's decisions in the Part 70 rulemaking, but rather simply parallels the proposed Part 70 revisions in order to be consistent with that proposal.

Because part 71 programs will generally be transitional programs, EPA may in some cases decide to staff the program primarily through contractor assistance. The emissions fee for a particular part 71 program would vary depending on the extent to which EPA relies on contractor support and the cost of contractor assistance. If the program is administered by EPA without contractor assistance, the proposed fee would be $45 per ton/yr. If the program were staffed through contractor assistance (except for those functions for which the use of contractors is not appropriate such as final permit issuance determinations), EPA would establish a fee based on the contractor costs for a particular program.

As provided in proposed §71.9(c)(3), the fee for a contractor assisted program is the sum of the permitting authority's costs associated with activities that it undertakes, the cost of paying a contractor to undertake other activities, and a surcharge that covers EPA's oversight costs. The formula for determining the cost of contractor assistance is as follows:

$C = [B + T + N]$ divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

B, T and N, when summed, are divided by the total tonnage of national emissions that would be subject to fees (12.3 million tons) to convert the cost into a per ton fee rate.

The Fee Analysis discusses the methodology used in computing the base cost of the part 71 program, travel costs and non-personnel data management and tracking costs. Travel costs and non-personnel data management and tracking costs would be the costs ($14,488,000 and $13,400,000 respectively) indicated in Table A-3 of that document.

As indicated above, the base cost would vary depending on the hourly rate paid for contractor assistance. Table A-3 presents the base cost for a program in which contractor assistance (costing $62 per hour) was used to the maximum extent possible. This $62 figure reflects the average hourly cost of several large contracts awarded by EPA for projects relating to air quality control. Using that hourly rate, the resulting per ton fee would be $77. The base cost was computed by summing the costs of contractor assistance for years 1 and 2 for the activities listed in Table A-1 of the Fee Analysis (except those activities which EPA should undertake, i.e., presiding over hearings, transition planning, guidance, contract management, and training) and then computing an annualized cost. To determine the fee for a particular part 71 program, EPA would substitute a different hourly rate (based on the actual rate charged by the contractor) into the computation.

Each time a part 71 program is implemented, EPA would determine the percentage of personnel time allocated to contractors by considering who could best perform each type of permitting activity (e.g., technical review and processing of permit applications and compliance plans, preparation for public hearings, compliance inspections). This flexibility would allow EPA to develop a staffing pattern that meets the unique needs of

the part 71 program being administered. By using the formula specified in proposed § 71.9(c)(3), EPA would arrive at the basic emissions fee. If the program is delegated or staffed largely by contractors, there would be additional costs due to the oversight that EPA must provide to the program. These additional costs of EPA's review of permit applications, compliance plans, draft permits, permit revisions and reopenings would increase the emissions fee by $3 per ton/yr.

The EPA currently uses contractors for permits related work pursuant to competitively bid contracts which compensate contractors on a level of effort basis, using set hourly fees. These contracts, which provide for a certain number of hours of services at a fixed hourly rate, were used in projecting the costs of using contractors to implement part 71 programs and could be used by EPA for part 71 programs when contractor assistance is needed. It has been suggested that for part 71 programs it may be more cost effective if contracts for part 71 programs were independently bid. Therefore, EPA solicits comments on whether fees for part 71 programs should be based on contractor costs established by a new competitive bid process. While not wanting to dismiss this alternative, the EPA is concerned about the costs involved with preparing the documentation required for the competitive bid process and that the length of time required to undertake this process (usually 12-18 months) would make this alternative impractical in light of the program's effective date. In particular, EPA solicits comments on whether this approach would result in cost savings.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee will vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

Cost per ton = (E x \$45) + [(1-E) x \$$C$] + \$3 surcharge

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, 1-E represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. The \$3 surcharge covers EPA's cost for administering contractor permit program activities. C shall be computed by using the following formula:

C = [B + T + N] divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents non-personnel data management and tracking costs.

(4) For programs that are delegated in part and that also use contractor assistance, the fee shall be computed using the formula in paragraph (c)(3) of this section, provided that E represents the proportion of total effort (expressed as a percentage) expended by EPA and the delegate agency.

Sources would be allowed to pay their initial annual fee in two installments. The first payment equalling one-third of the annual fee would have to be submitted along with the initial fee calculation worksheet. The balance would be due four months later, but in no event later than a year after the program's effective date.

As provided in proposed § 71.9(g), for sources that receive a part 71 permit as a result of an EPA veto of the State's proposed part 70 permit (as provided in proposed § 71.4(e)), the initial fee calculation work sheet and fees would be due 3 months after the date the part 71 permit is issued. Delaying the source's fee payment in this manner would provide the State an opportunity to issue a permit that satisfies EPA's objection, thereby relieving sources of the burden of paying both State and Federal permit fees. However, such sources would not be permitted to pay fees in installments because their obligation to pay fees arises after EPA has completed the permit issuance process.

For sources that commenced operation during the calendar year preceding the date on which a source's initial application is due, the initial fee calculation would be based on an estimate of the current calendar year's actual emissions. This estimated fee would be adjusted in the first annual emission report. In addition, sources that would be required to submit initial fee calculation work sheets and fees between January 1 and March 31, as required by either proposed § 71.9(f)(1) or § 71.9(g), would have the option of basing their initial fee calculation on an

types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the above, if the Administrator determines that the fee structures provided in paragraphs (c)(1)-(4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) Prohibition on fees with respect to emissions from affected units. Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) Submission of initial fee calculation work sheets and fees.

(1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment must accompany each initial fee calculation work sheet.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the

(1) The balance of the annual fee owed must be paid within one month of the due date of the initial fee or within one year of the effective date of the part 71 program, whichever is earlier."

in an amount that equals one-third of the annual fees owed

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sheets and fees within 6 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1) of this part.

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and fees when submitting their permit applications in accordance with the requirements of § 71.5(b)(1) of this part.

(g) Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e) of this part. Fees for such sources shall be determined as provided in paragraph (c) of this section. However, initial fee calculation work sheet and ~~[illegible]~~ fees for such sources shall be due three months after the date on which the source's part 71 permit is issued.

(h) Annual emissions reports.

(1) Deadlines for submission. Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year and a fee calculation work sheet (based on the report) each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets on April 1.

(2) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(3) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report

Proposed preamble language to add discussions of a mechanism for resolving jurisdictional disputes:

The proposed Tribal rule describes an administrative procedure by which EPA would resolve jurisdictional issues affecting Tribes. See 59 FR 43962-43963 (Aug. 25, 1994). That discussion is incorporated here by reference. Generally, EPA expects these issues to involve the precise boundary of the reservation in question and, less frequently, competing claims of jurisdiction over land which is outside of the exterior boundaries of a reservation.

Briefly summarized, the proposed Tribal rule would require EPA to notify the appropriate governmental entities regarding the Tribe's assertion of jurisdiction.[1] Those entities would have fifteen days following receipt of EPA's notification to provide formal comments to EPA regarding any dispute they might have with the Tribe's assertion of jurisdiction. Where the dispute concerns jurisdiction over off-reservation lands, appropriate governmental entities may request a one-time fifteen-day extension to the comment period. In all cases, comments from appropriate governmental entities would have to be offered in a timely manner and be limited to the Tribe's jurisdictional assertion. Where no timely comments are presented, EPA would conclude there is no objection to the Tribe's assertion. To raise a competing or conflicting claim, a commenter would be required to clearly explain the substance, basis, and extent of its objections. Finally, where EPA receives timely notification of a dispute, it could obtain such additional information and documentation as it believes appropriate and, at its option, consult with the Department of the Interior.

For purposes of identifying the Tribal area for which a part 71 program is implemented, EPA proposes to follow the approach to

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[1] For purposes of this rule, EPA is proposing to adopt the same definition of "governmental entities" as the Agency did in its December 1991 Water Quality Standards regulation. See 56 FR 64876 at 64884 (Dec. 12, 1991).

resolving jurisdictional issues taken in the Tribal air rule. If the Tribal rule is finalized as proposed, EPA would notify appropriate governmental entities of the boundary of the Tribal area for a part 71 program at least 90 days prior to the effective date of the program. Those entities would then have an opportunity to provide formal comments prior to the program's effective date, as discussed above. Where no timely comments are presented, EPA would make a determination that the boundary for the part 71 program would be as proposed in the notice. Subsequently, EPA would publish a notice in the Federal Register which describes the precise boundaries of the part 71 program.

Where EPA identifies a jurisdictional dispute, it may obtain additional information and documentation and consult with the Department of the Interior prior to making a determination. The EPA would subsequently publish a notice in the Federal Register which describes the precise boundaries of the part 71 program. If the dispute cannot be resolved promptly, EPA would retain the option of implementing the part 71 program in the areas that are clearly shown to be part of the reservation (or are otherwise within the Tribe's jurisdiction). This will allow EPA to implement a part 71 program that covers all undisputed areas, while withholding action on the portion that addresses areas where a jurisdictional issue has not been satisfactorily resolved.

Proposed revision to 71.4(b):

(b) Part 71 programs for Tribal areas. The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2 of this part, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by November 15, 1995.

(1) Determining the boundaries of a Tribal area. At least 90 days prior to the effective date of a part 71 program for a Tribal area, the Administrator shall notify all appropriate governmental entities of the proposed geographic boundaries of the program.

(i) For programs solely addressing air resources within the exterior boundaries of the Reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the Reservation. For programs also addressing off-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the Tribe's assertions of jurisdiction over such off-reservation area(s), including:

(A) A map or legal description of the off-reservation area(s) over which the Tribe asserts jurisdiction.

(B) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of jurisdiction which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of jurisdiction over the off-reservation area(s).

(ii) The appropriate governmental entities shall have 15 days to provide written comments to the Administrator regarding any dispute concerning the boundary of the Reservation. Where a Tribe has asserted jurisdiction over off-reservation areas, appropriate governmental entities may request a single 15-day extension to the general 15-day comment period.

(iii) In all cases, comments must be timely, limited to the scope of the Tribe's jurisdictional assertion, and clearly

explain the substance, bases and extent of any objections. If a Tribe's assertion is subject to a conflicting claim, the EPA may request additional information and may consult with the Department of the Interior.

(iv) The Administrator shall promptly decide the scope of the Tribe's jurisdiction. If a conflicting claim cannot be promptly resolved, the Administrator shall implement a part 71 program encompassing all undisputed areas.

(v) The part 71 program will extend to all areas within the exterior boundaries of the Tribe's reservation, as determined by the Administrator, and any other areas the Administrator has determined to be within the Tribe's jurisdiction.

(vi) The Administrator's determination of the scope of the Tribe's jurisdiction shall be published in the Federal Register at least 30 days prior to the effective date of the part 71 program.

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within two years of the effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

is admittedly a complex system. In light of the extensive comments received concerning the complexity of the proposal, EPA will publish a supplemental proposal covering part 70 permit revision procedures that differs from the August 29, 1994 proposal. The supplemental proposal is expected to be published within a few months of the publication of today's part 71 proposal and has not been developed in time to be incorporated into today's proposal. After the new part 70 procedures are proposed, EPA will most likely need to publish a supplemental proposal for part 71 pertaining to permit revision procedures. If so, EPA would finalize other portions of the rule first in order to be able to administer part 71 programs by November 15, 1995. The EPA expects to promulgate the part 70 permit revisions procedure in time to adjust corresponding sections of proposed part 71, as appropriate, before EPA would receive any applications for permit revisions under a part 71 program.

a. Administrative Amendments.

The provisions governing administrative amendments to part 71 permits would be located at proposed § 71.7(e). Today's proposal would follow existing part 70 in allowing changes that are generally clerical in nature to be made pursuant to administrative amendment procedures. Also, like the proposed revisions to part 70, part 71 would allow increases in the frequency of required testing, monitoring, recordkeeping and reporting to be incorporated through the administrative amendment process. While part 70 provides a subsequent opportunity for identifying other changes similar

that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10 or, where applicable, a PM-10 precursor.

Minor new source review (minor NSR) means a title I program approved by EPA into a State's implementation plan under EPA regulations implementing section 110(a)(2) of title I of the Act for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under EPA regulations implementing parts C or D of title I of the Act.

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or State program means an operating permits program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70.

Part 71 permit, or permit (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in § 71.3(a) and § 71.3(b) of this part.

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b) of this part.

Permit revision means any administrative permit amendment, de minimis permit revision, minor permit revision, or significant permit revision.

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency with a part 70 program.

Administrator or EPA means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Affected source shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit revision or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is eligible to be treated in the same manner as a State.

(2) The State or Tribal area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit revision, or permit renewal is being proposed.

(4) Except as provided in paragraph (3) of this definition, the term "affected State" does not include any local agency, district, or interstate program.

Affected unit shall have the meaning given to it in the regulations promulgated under title IV of the Act.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including

requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any requirement enforceable by the Administrator and by citizens under the Act that limits emissions for the purposes of creating offset credits or for complying with or avoiding the applicability of applicable requirements;

(3) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(4) Any standard or other requirement under section 111 of the Act, including section 111(d);

(5) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(6) Any standard or other requirement of the acid rain program under title IV of the Act or the regulations promulgated thereunder;

(7) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;